of the Indian Penal Code. After these remarks I decline to interfere, and return the record to the Court below for such action as it may think necessary to take.

1907

EMPEROR v. TABARAK ZAMAN KHAN.

1907 *November* 21.

APPELLATE CIVIL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

RUP CHAND (PLAINTIFF) *v.* DASODHA AND ANOTHER (DEFENDANTS).*

Guardian ad litem—*Appeal—Guardian* ad litem *not made a party by appellant—Limitation.*

Where a guardian *ad litem* of a defendant respondent was not made a party to an appeal filed by the plaintiff until after the period of limitation for filing such appeal had expired, it was *held* that the appeal was not for this reason time-barred. *Khem Karan* v. *Har Dayal* (1) followed.

THE facts of this case, so far as they are necessary for the purposes of this report are as follows. The suit was brought by one Rup Chand, for a declaration that he and his uncle Hardwari Lal, were beneficially entitled as members of a joint Hindu family to all the ancestral property derived from one Narain Das. The defendant Musammat Dasodha, the widow of Lalin Mal a great grandson of Narain Das, defended the suit upon the ground that the family was separate. Musammat Dasodha was a minor, and was represented in the Court of first instance by a guardian *ad litem*. The suit was dismissed. The plaintiff appealed, but did not implead the guardian *ad litem*. When the mistake was discovered an application was made to the High Court to rectify the mistake; but this was not done until after the period of limitation for the appeal had expired. At the hearing a preliminary objection was taken by the respondents that the appeal was barred by limitation.

Mr. *W. Wallach*, the Hon'ble Pandit *Sundar Lal* and Babu *Jogindro Nath Chaudhri*, for the appellant.

Pandit *Moti Lal Nehru* and Dr. *Satish Chandra Banerji*, for the respondents.

STANLEY, C.J., and BURKITT, J.—Mr. *Moti Lal* for the respondents raised a preliminary objection to the hearing of this

*First Appeal No. 190 of 1905 from a decree of Nihal Chandra, Subordinate Judge of Saharanpur, dated the 26th of April 1905.

(1) (1881) I. L. R., 4 All., 37.

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appeal, namely, that it is barred by limitation. The defendant respondent to the suit, Musammat Dasodha, is a minor and was represented in the Court below by a guardian *ad litem*. In the memorandum of appeal which was filed the guardian *ad litem* was not made a party to the appeal. This it is said was due to the fact that in the copy of the decree which was furnished to the appellants the fact that there was a guardian *ad litem* was not stated. The memorandum of appeal was filed within time, but the application which was subsequently made to add the name of the guardian *ad litem* to the record was made some months after the expiry of the time allowed for the presentation of the appeal. It is now said that the appeal was not complete until the guardian *ad litem* was added, and that when that was done the appeal was barred by the Statute of Limitation. It has been decided in a case in this Court, namely, the case of *Khem Karan* v. *Har Dayal* (1) that a suit may be brought against a minor before a guardian has been appointed and that limitation runs from the date of the plaint and not from the appointment of the guardian. We think that a memorandum of appeal should be governed by the same considerations. We may point out that a guardian *ad litem* is not a party to a suit or appeal. He is merely named in the record as the person appointed by the Court to look after the interest of the minor. We think that the memorandum of appeal was filed within time, and that there is no substance in the objection. We therefore disallow the objection.

We now come to the merits of the appeal. The plaintiff, Rup Chand, who is a grandson of one Narain Das, deceased, brought the suit out of which the appeal has arisen for a declaration that he and his uncle Hardwari Lal were beneficially entitled to all the ancestral property derived from Narain Das, on the allegation that the descendants of Narain Das formed a joint Hindu family, and that he, the plaintiff, and Hardwari Lal as the surviving male members of that family were now entitled absolutely to the entire property. The defendant Musammat Dasodha is the widow of Lalu Mal, deceased, who was a great-grandson of Narain Das. She claimed through her husband a life interest in one-fourth of the property of Narain Das. The parol

(1) (1881) I. L. R., 4 All., 37.

evidence which was given in support of Musammat Dasodha's case was extremely unsatisfactory, in fact so weak as to be almost worthless, but a number of documents were adduced in evidence which satisfied the learned Subordinate Judge that prior to and at the death of Lalu Mal in July 1903, the family had ceased to be joint. We think it unnecessary to refer particularly to these documents. In the lengthy judgment of the Subordinate Judge they are referred to, but we may point out that one or two of these seem to form an insurmountable barrier to the granting of the relief which the plaintiff seeks. On the 30th of June 1902, a document which is called a deed of compromise was prepared between Musammat Gomi as the certificated guardian of Musammat Dasodha, the widow of Lalu Mal, which is signed by Hardwari Mal and also by Kedar Nath, a grandson of Narain Das, in which the ancestral property was divided between the members of the family. Now the plaintiff Rup Chand was no party to this instrument, but we find that shortly after its execution, namely, on the 5th of July 1902, he executed a bond in favour of a creditor in which he hypothecated one-fourth of the property describing himself as being the owner of one-fourth. In that bond he gives an assurance to his creditor that he was the absolute owner of the one-fourth, without the participation of anyone else. A similar bond was executed by him on the 25th March 1903. In view of these documents, which are supported by a number of other documents to which we have not been particularly referred, we think that the family was not joint at the date of their execution and that the Court below could not have come to any other conclusion than that at which it arrived. We dismiss the appeal with costs.

Appeal dismissed.

1907
November 25.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

DHANKA (PLAINTIFF) *v.* UMRAO SINGH (DEFENDANT).*

Act (Local) No. II of 1901 (*Agra Tenancy Act*), *section* 201— *Act No. I of* 1872 (*Indian Evidence Act*), *section* 4—*Evidence—Presumption—Record of plaintiff's name as a co-sharer.*

Held that the presumption enjoined by section 201, clause (3) of the Agra Tenancy Act, 1901, is not conclusive, but may be rebutted by evidence offered to the contrary. *Banwari Lal* v. *Nadar* (1) referred to.

THIS was a suit for profits brought by a plaintiff, who was recorded in the khewat as the owner of one-third of the property in respect of which the claim was brought. The plaintiff was the widow of Beni Ram, who predeceased his father Ram Prasad. The defendant Umrao Singh was a surviving son of Ram Prasad. The plaintiff appears to have been in possession and in receipt of the profits without objection on the part of the persons legally entitled down to the year 1900. In that year, however, Umrao Singh brought a suit against the plaintiff for a declaration that she was not entitled to a share of the profits of this property. This suit resulted in a compromise, by which Umrao Singh agreed to pay Musammat Dhanka Rs. 10 per mensem and undertook not to alienate the property during Dhanka's life-time. The compromise, however, does not appear to have been acted upon, for even after it was entered into Musammat Dhanka sued for and obtained decrees for profits, nor was the khewat amended in accordance with the terms of the compromise. The present suit was decreed in part by the court of first instance (Assistant Collector), but on appeal the lower appellate court (District Judge of Bareilly) finding on the evidence that the plaintiff's name was recorded merely *solatü causâ*, and that she was not in fact a co-sharer, allowed the appeal and dismissed the plaintiff's suit. The plaintiff appealed to the High Court. This appeal came before a Division Bench, the members of which differed as to the effect to be given to section 201, cl. (3), of the Agra Tenancy Act, 1901, and the decree accordingly followed the judgment of Knox, J., who agreed with the court below (*See* Weekly Notes, 1907, page 43). The plaintiff thereupon appealed under section 10 of the Letters Patent.

* Appeal No. 18 of 1907 under section 10 of the Letters Patent, from the judgment of Knox, J, dated the 8th January 1907, in S. A. No. 1090 of 1905.

(1) (1906) I. L. R., 29 All., 158.

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DHANKA v. UMRAO SINGH.

should be considered conclusive pr[illegible]ed that certain entry it was careful to make a pro[illegible] effect. [illegible] Hindu whole we see no reason for giving [illegible]veness to a presumption where the Legislature has not in [illegible]press terms done so. We are supported in this view by the ruling in the case of *Banwari Lal* v. *Niadar* (1). We therefore, agreeing with our brother Knox, dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

December 2.

Before Mr. Justice Sir George Knox.

EROR v. KASHI NATH AND ANOTHER. *

[illegible] *(Gambling Act), se[illegible]tions 5 and 6—Warrant for search [illegible]nation"—Procedure—Endorsement [illegible] house to whom it was issued.*

Warrants issued under Act No. III of 1867 are governed by those provisions of the Code of Criminal Procedure which provide for the issue and execution of warrants in general: there is, therefore, no objection to the officer to whom such a warrant is originally issued endorsing it to another officer, provided that the latter is an officer to whom such warrant could be legally issued in the first instance.

IN this case a Magistrate of the district of Benares, having before him information of various kinds tending to the conclusion that a certain house in the city of Benares was used as a common gaming house by two persons named Kashi Nath and Raj Nath, issued a warrant under section 5 of Act No. III of 1867 for the search of the suspected house. The warrant was addressed to the Kotwal of Benares. The Kotwal endorsed it over to the Sub-Inspector of the Chauk thana for execution, and it was executed by that officer. On entering the house a large collection of persons of very various castes was found there, apparently gambling, and in front of Kashi Nath and Raj Nath was a box containing money. Kashi Nath and Raj Nath were convicted under section 3 of Act No. III of 1867, and sentenced to three months' rigorous imprisonment each. Against their convictions and sentences they applied in revision to the High Court.

* Criminal Revision No. 622 of 1907, against the order of Baij Nath, Sessions Judge of Benares, dated the 17th of September, 1907.

(1) (1906) I. L. R., 29 All., 158.